In the High Court of Judicature at Madras

Dated: 17.02.2006

Coram:

The Honourable Mr.Justice S.R.SINGHARAVELU

Civil Revision Petition (NPD) No.386 of 2003

A.R.Bhoopathi ..Petitioner

..vs..

1. The State Election Commissioner
   through its Election Commissioner,
   Tamil Nadu, Chennai.

2. The District Election Officer-cum-
   District Collector,
   Coimbatore District,
   Coimbatore.

3. The Returning Officer-cum-
   Block Development Officer,
   Sulur Panchayat Union,
   Sulur.

4. A.K.Palanichamy

5. A.V.Anbarasu ..Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order dated 20.12.2002 made in E.O.P.No.181 of 2001 on the file of Principal District Court, Coimbatore.

For Petitioner : Mr.A.V.Arun

For Respondents : No appearance for R1, R2 and R5
Mr.V.Subbarayan for R3
Mr.K.Kalyanasundaram for R4

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ORDER

Civil revision petition arises against the order dated 20.12.2002 in dismissing the election original petition filed by the revision petitioner, by the Principal District Judge, Coimbatore.

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2.Revision petitioner filed the election petition (i) to declare the election for the President of Arasur Village Panchayat held on 18.10.2001 as null and void; (ii) to hold the declaration of the Election authorities dated 21.10.2001 announcing the 4th respondent as elected candidate in the election for the President of the Arasur Village Panchayat on 18.10.2001 as null and void; and (iii) to pass an order for re-election for the President of Arasur Village Panchayat, on the ground that the 4th respondent was disqualified from contesting the election that was held on 18.10.01.

3.According to the revision petitioner, the disqualification was the conviction and sentence passed against the 4th respondent on 20.02.2001 by the Assistant Sessions Court in S.C.No.44 of 1999 for offences under sections 148 and 427 of IPC.

4.The election petition was filed on 05.11.2001. On appeal against the conviction and sentence passed by the Assistant Sessions Judge of Thiruppur, the Appellate Court, namely, the II Additional Sessions Court, Coimbatore, has set aside the conviction and sentence on 11.09.2002.

5.The District Court, by virtue of its order dated 20.12.2002 held that the order of setting the conviction and sentence aside will take back to the original date of conviction, namely, 20.02.2001 and therefore, it may not amount to a disqualification on the subsequent date of election, namely, 18.10.2001. The District Court further held that the offences under sections 147 and 427 IPC reported against the 4th respondent may not come within the meaning of moral delinquency, since this could have happened even if a party agitated for his protection of right, whether it is lawful or unlawful.

6.Regarding the second aspect of moral delinquency, learned counsel for the revision petitioner drew my attention to the following meaning of term "Moral Turpitude" as found in VENKATARAMIYA's LAW LEXICON.

> "The term "moral turpitude" has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow man or to society in general.....it is clear that if a member of the Police Force is guilty of having been found drunk at a public place or to have become habituated to liquor and if he is convicted by a criminal court, then his conviction should be held as involving moral turpitude-Durga Singh ..vs.. State of Punjab, A.I.R.1957 Pubjab 97 at page 98".

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7.According to Webster's Dictionary meaning it is "an act or behaviour that gravely violates the moral sentiment or accepted moral standards of community".

8.In the book "Words and Phrases Legally Defined" Vol.III, 2nd Ed.at page 294, by Saunders, it has been observed under the heading "Moral turpitude" by the Court in Canada as follows:

> "I find very little merit in the applicant's claim that the admitted offences of issuing false cheques and being the operator of worthless cheques are not crimes of moral turpitude. These acts of baseness in the duties which a man owes to his fellowmen .... I agree entirely with the American decisions that the words "moral" preceding the word "turpitude" adds nothing to it, it is a pleonasm which has been used only for the sake of emphasis".

9.At page 1200 of the book "Corpus Juris Secundum", Vol.I VIIIth Ed.it is stated, "moral turpitude" is defined as quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita.

10.The learned Judge of the Allahabad High Court, A.P.SRIVASTAVA, J., in Mangali ..vs.. Chhakki Lal (A.I.R.1963 All.527) was of the opinion that all offences could not be taken as "involving moral turpitude" and if that be taken, the Legislature would have, instead of using the word "involving moral turpitude" would have simply used the word "involving in an offence". The tests, according to him, are as follows:

> (1) Whether the act leading to a conviction was such as could shock the moral conscience of society in general;
>
> (2) Whether the motive which led to the act was a base one; and
>
> (3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society."-Risal Singh ..vs.. Chandgi Ram, A.I.R.1966 Punjab 393 at page 393-94".

11. It was also submitted that offence under Prohibition Act in consumption of liquor was held as touching the moral delinquency and therefore amounted to disqualification. Consumption of liquor does not occur in this case. What was described in this case of moral delinquency was in respect of offences under sections 148 and 427 IPC. Section 148 IPC deals

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with rioting, armed with deadly weapon and section 427 IPC deals with mischief causing damage to property. The term 'morality' was governed by Vedic and Religious Rules; whereas offences are described in Indian Penal Code. Even smoking may be considered as immoral by Religious Rules; but they may not be offences of present law with certain exceptions. Murder and theft were prohibited as immoral in the above Rules of Religion. But fighting without hurting, as in this case, and causing damage at the time of fighting was nowhere described as immoral.

12.Learned counsel appearing for the revision petitioner also did not cite any incident or precedent to show that quarrel and fighting between two groups is immoral. Therefore, I concur with the finding given by the learned District Judge that the offences under sections 148 and 427 IPC., may not involve "moral delinquency".

13.Coming to the aspect of conviction setting aside by the appellate Court may take back to the original date of conviction, the District Court relied upon a case law in B.R.Katur ..vs.. State of Tamil Nadu ((2001) 7 SCC 231), which followed the principle laid in Vidya Charan Shukla ..vs.. Purshottam Lal Kaushik (AIR 1981 SC 547).

14.But that has been overruled in a later Supreme Court case in K.Prabhakaran ..vs.. P.Jayarajan ((2005)1 SCC 754, wherein the following was observed:

> "The factum of pendency of an appeal against conviction is irrelevant and inconsequential. So also a subsequent decision in appeal or revision setting aside the conviction or sentence or reduction in sentence would not have the effect of wiping out the disqualification which did exist on the focal point dates referred to hereinabove. The decisive dates are the date of election and the date of scrutiny of nomination and not the date of judgment in an election petition or in appeal thereagainst".

15. Therefore, it becomes clear that the order passed in the criminal appeal setting aside the conviction and sentence at a later point of time may not take back to the original date of conviction. The conviction and sentence is construed to be continued till it was set aside. Even the suspension of sentence may not erase it and the effect of which is to keep it in abeyance. Therefore, on the date of election, namely, 18.10.2001 the conviction and sentence dated 20.02.2001 continued and that will make it subsisting conviction and sentence.

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16. Even though the conviction was subsisting on the date of election, it may not amount to moral delinquency for the reasons aforesaid. Therefore, the order of District Judge holds good.

17. For the reasons stated above, the Civil revision petition fails and is dismissed. No Costs.

gl

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Principal District Judge,
Coimbatore.

2.The Record Keeper
VR Section
High Court
Madras.

+ one cc to Mr.K.Kalyanasundaram, Advocate Sr.No.7358.
+ one cc to Mr.A.V.Arun, Advocate Sr.No.7304.

NG (CO)
RSM/28.2.2006

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